

Petition of the Town of Framingham for a determination of the rates applicable to the transportation and treatment of sewage pursuant to an intermunicipal agreement with the Town of Ashland.

HEARING OFFICER RULING ON CLARIFICATION OF ORAL RULING ON
AVAILABILITY OF RECROSS-EXAMINATION

On June 18, 2003, the Department of Telecommunications and Energy (“Department”) conducted an evidentiary hearing.¹ At the hearing, the Town of Ashland requested a written memorialization of an oral ruling. Rulings issued at hearings need not be issued in writing to have full force and effect. 220 C.M.R. § 1.06(6)(d)(1) - (2). A written clarification of the June 18, 2003 oral rulings regarding the availability of recross-examination by parties after the Department’s examination of empaneled witnesses is warranted in this case, however, because of the extensive colloquy between counsel and the bench during the issuance of the oral rulings (Tr.1 at 164-68, 197-200).

As an initial matter, although the Department is not bound to observe the rules of evidence observed by the courts, the Department follows those rules “when practicable.” G.L. c. 30A, § 11; 220 C.M.R. § 1.10(1). Underlying the procedures set forth in this clarification ruling, the Hearing Officer Memorandum of May 21, 2003, and the Ground Rules, which supplement the Department’s regulations where they are silent, are the need to avoid unduly repetitious and cumulative evidence and the need to promote the efficient conduct of the evidentiary hearings. 220 C.M.R. § 1.10(1).

A party has no right to recross unless allowed within the discretion of the hearing officer. If allowed, recross is generally limited only to new matters raised on redirect. The mere fact that the proponent of a witness has been given the opportunity to redirect that witness

¹ The hearing was continued to July 16, 2003.

does not give rise to the opponent's recross as of right. Sections 1.06(1) - (3) of the Department's regulations do not provide guidance on this question as Ashland claims (Tr.1, at 198). I have already permitted the parties to have the opportunity for redirect and recross as to matters raised by Ashland's cross-examination (Tr.1, at 33-36; 105-112; 125-28; 135-36). As I stated at the hearing, Framingham may further redirect the witnesses limited to matters raised by the Department's cross-examination (Tr.1, at 165-67). I did not grant Framingham leave to redirect on any matters outside the scope of the Department's cross-examination (Tr.1, at 168).

I modified my initial oral ruling to permit recross on "any subject matters that are newly raised" by denying recross on matters that are merely raised by the Department's cross-examination (Tr.1, at 164-65). This is consistent with the general rule that recross is limited to matters newly raised on redirect. Absent the opening of any new matters beyond the scope of the Department's cross-examination on redirect, there shall be no additional recross by Ashland (Tr.1, at 200). Should Framingham's witnesses on redirect open previously unexplored matters that are relevant to the case but beyond the scope of the Department's cross-examination, Ashland may recross on those new matters. Further, notwithstanding these rulings, the Department may at any time require parties to present additional evidence upon any issue. 220 C.M.R. § 1.06(h).

When Ashland presents its own direct case, it may also at its option offer testimony regarding the Newton-Wellesley intermunicipal agreement, about which the Hearing Officer Memorandum of June 11, 2003 had instructed the parties to have their witnesses be prepared to discuss. Ashland may additionally present rebuttal evidence at that time (Tr.1, at 167-68). The scope of rebuttal is limited to relevant evidence presented by Framingham that was unanticipated and not presented in Framingham's prepared testimony (Tr.1, at 168). This may include facts adduced as a result of the Department's cross-examination of Framingham's witnesses. Prior to presenting rebuttal, counsel must identify the matters to be presented.

Pursuant to 220 C.M.R. § 1.06(6)(d)(3), appeals to the Commission of this clarification ruling must be filed with the Department in writing with supporting documentation, including citation to the hearing transcript, by 12:00 p.m. on July 14, 2003.

_____/s
Jesse S. Reyes, Hearing Officer